

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jun 10, 2024

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DARYL T. BROOKS JR.,

Plaintiff,

v.

WASHINGTON STATE DSHS;
GARFIELD COUNTY WASHINGTON
SHERIFF'S DEPARTMENT; LAKE OF
THE WOODS COUNTY MINNESOTA
CPS AGENCY DIRECTOR AMY
BALLARD, in her personal capacity,

Defendants.

No. 2:24-CV-00029-MKD

ORDER GRANTING
DEFENDANT'S MOTION TO
DISMISS, DENYING
PLAINTIFF'S MOTION TO
AMEND COMPLAINT, AND
DENYING PLAINTIFF'S
REQUEST FOR ELECTRONIC
ACCESS

ECF Nos. 22, 24, 27, 29

Before the Court is Defendant Ballard's Motion to Dismiss, ECF No. 22, Washington State Department of Health and Human Services' (DSHS) Motion to Dismiss, ECF No. 24, Plaintiff's Motion for Electronic Access, ECF No. 27, and Plaintiff's Motion for Leave to Amend, ECF No. 29. The Court has reviewed the record and is fully informed. For the reasons set forth below, the Court grants

Defendants' Motions to Dismiss, denies Plaintiff's Motion for Electronic Access, and denies Plaintiff's Motion for Leave to Amend Complaint.

BACKGROUND

A. Procedural History

On February 1, 2024, Plaintiff filed a *pro se* Complaint against Lake of the Woods, Minnesota Child Protective Services (CPS) Agency Director Amy Ballard¹, the Garfield County Washington Sheriff's Department (GCSO), and DSHS. ECF No. 1. On April 4, 2024, the GCSO filed a Motion to Dismiss under Rule 12(b)(6). ECF No. 13. Plaintiff filed a response to the Motion to Dismiss, and a Motion for Leave to Amend Complaint. ECF Nos. 16, 18. On May 30, 2024, the Court granted the GCSO's Motion to Dismiss and denied Plaintiff's Motion for Leave to Amend Complaint. ECF No. 28. On April 30, 2024, Defendant Ballard filed a Motion to Dismiss, ECF No. 22, and on May 6, 2024, Defendant DSHS filed a Motion to Dismiss, ECF No. 24. Plaintiff filed responses, as well as a second Motion for Leave to Amend Complaint. ECF Nos. 26, 29, 30.

B. Summary of Allegations

In his 56-page Complaint, Plaintiff alleges 54 claims for relief. ECF No. 1. The allegations in the Complaint arise out of a series of CPS reports made by

¹ Defendant Ballard is named in this suit in her personal capacity. ECF No. 1 at 1.

1 Plaintiff's ex-wife, Gina Heathcott, and other interactions with law enforcement
2 and government officials that took place from 2006 through 2023. *Id.* at 7.² Based
3 on this series of interactions, Plaintiff alleges that the defendants violated his First,
4 Second, Fourth, Fifth, and Fourteenth Amendment rights. *Id.* at 5. He also alleges
5 intentional infliction of emotional distress, assault, reckless endangerment,
6 stalking, harassment, false reporting, official misconduct, unlawful conduct,
7 conspiracy, violations of the Americans with Disabilities Act (ADA), solicitation
8 to commit act of violence, discrimination, failure of duty, destruction of his parent-
9 child relationships, coercion, and intimidation. *Id.* at 5, 12-56. Plaintiff seeks
10 \$15,000,000 in damages, and declaratory relief. *Id.* at 52, 55.

11 *1. Incidents in 2004 to 2007*

12 Plaintiff shares four children with Ms. Heathcott. *Id.* at 9. From 2004
13 through 2006, Ms. Heathcott made reports to the Lake of the Woods County law
14 enforcement and CPS "to interfere with [P]laintiff's parenting time." *Id.*
15 Defendant Ballard was involved in the CPS investigation, and Plaintiff's children
16

17 ² The page numbers cited in this Order are the page numbers generated by the
18 Court's CM/ECF system, found in the top right corner of the documents.
19 Plaintiff's page numbering, found in the bottom right corner of the Complaint, is
20 different than the CM/ECF numbering.

1 were removed from Plaintiff from 2007 to 2009. *Id.* at 9, 16-17. Plaintiff was not
2 allowed to communicate with his children except in limited situations, and after
3 Ms. Heathcott threatened to report Plaintiff for harassment, Plaintiff ceased contact
4 with his children. *Id.* at 17-18. Plaintiff's parenting plan was modified without
5 notice to Plaintiff. *Id.* at 18. Plaintiff alleges these incidents violated his Fourth
6 Amendment and Fourteenth Amendment rights and amounted to intentional
7 infliction of emotional distress. *Id.* at 12-13, 19.

8 In July or August 2006, Defendant Ballard informed Plaintiff that Ms.
9 Heathcott had attacked his eldest son, and Plaintiff needed to return to retrieve his
10 son. *Id.* at 13. Plaintiff was working as a truck driver, and he arrived to retrieve
11 his son two days after the call; he also sought an Order for Protection against Ms.
12 Heathcott and to remove his other children from Ms. Heathcott's home. *Id.*
13 Defendant Ballard and the Chief of Police threatened Plaintiff that if he filed the
14 Order of Protection, Defendant Ballard would remove all of Plaintiff's children to
15 foster care. *Id.* Plaintiff was then served an Order for Protection, denying him
16 contact with his three younger children, which Plaintiff had to defend against in
17 court. *Id.* at 14. Plaintiff also contends this incident violated his Fourteenth
18 Amendment rights and amounted to intentional infliction of emotional distress. *Id.*
19 at 14-15.

1 2. *Incidents in 2007*

2 In July 2007, Plaintiff was riding in a vehicle with his now wife, Heide
3 Brooks. *Id.* at 20. A GCSO deputy shined a light into the windshield, and Plaintiff
4 and his wife were “temporarily blinded” by the action. *Id.* at 21. The deputy
5 stopped Plaintiff’s vehicle and told Plaintiff that the view of his rear tag light was
6 obstructed from full view. *Id.* Plaintiff left with a warning to repair the tag light,
7 but Plaintiff states the light was working when Plaintiff returned home. *Id.*
8 Plaintiff claims that this stop constituted reckless endangerment, assault,
9 harassment, and a violation of his Fourth Amendment rights. *Id.* at 22.

10 In September 2007, Plaintiff’s wife called the GSCO for help with an
11 altercation between Plaintiff’s son and Ms. Brooks’ son. *Id.* at 23. The deputy that
12 responded to the call told Plaintiff that it was “silly” to call law enforcement
13 regarding such a dispute, and Plaintiff “understood that the deputy was refusing to
14 render services.” *Id.* Plaintiff told the deputy to leave, and the deputy “protested
15 the demand for his exit,” but then left. *Id.* at 24. Plaintiff’s wife later reported the
16 deputy would “aggressively tailgate” her when he saw her around town. *Id.*
17 Plaintiff claims that these interactions violated his First and Fourteenth
18 Amendment rights and amounted to stalking and failure of duty by a public officer.
19 *Id.* at 25.

1 3. *Incidents in 2009 to 2011*

2 Plaintiff's Complaint discusses a series of events that took place between
3 2009 and 2011. *Id.* at 25-27. It is unclear when in that date range the alleged
4 violations of Plaintiff's rights occurred. Plaintiff states he was asked to pick up his
5 two youngest children from Ms. Heathcott in April 2009. *Id.* His older children
6 lived with Ms. Heathcott and her family until fall 2011. *Id.* Plaintiff was required
7 to pay child support for all four children during an unclear period, and Ms.
8 Heathcott did not return the court-ordered child support back to Plaintiff. *Id.* at 26-
9 27. Plaintiff alleges these incidents amount to coercion, theft from a vulnerable
10 adult, and intentional infliction of emotional distress. *Id.* at 27.

11 4. *Incident in 2010*

12 In 2010, Plaintiff's stepson and daughter were visiting the Pomeroy Church
13 of the Nazarene and were accused of stealing by the church administration, and the
14 children were separated from the other children and "held against their will." *Id.* at
15 27-28. Plaintiff and his wife were not notified of the accusations. *Id.* Plaintiff
16 reported the incident to GSCO "so that the individuals involved could be arrested
17 and prosecuted for the false imprisonment and the threatening of the two minor
18 children." *Id.* at 28. A GCSO sheriff arrived, who was allegedly a member of the
19 Church, and asked Plaintiff to meet with the Church leaders while the sheriff
20 mediated the meeting. *Id.* Plaintiff claims that the sheriff's failure to take "legal

1 action” against the Church constitutes a violation of his Fourteenth amendment
2 rights, and amounted to coercion, failure of duty by public officer, and official
3 misconduct. *Id.* at 28-29.

4 *5. Incidents in 2011*

5 In October or November 2011, Garfield County Deputy Auditor Tina Keller
6 reported that Plaintiff had an outburst and made threatening remarks against her,
7 which Plaintiff denies. *Id.* at 30. A GSCO sheriff, who was also Tina Keller’s
8 husband, travelled to Plaintiff’s home to confront him about the incident. *Id.*
9 Plaintiff alleges that this constituted false reporting, official misconduct,
10 conspiracy, intentional infliction of emotional distress, and denial of his First
11 Amendment rights, among other things. *Id.* at 30-32.

12 In December 2011, Plaintiff and his wife were feeding his horse at the
13 county fairground stalls. *Id.* at 32. A GCSO deputy requested identification and
14 Plaintiff refused. *Id.* The deputy continued to request identification until
15 Plaintiff’s wife presented her identification and the encounter ended. *Id.* at 33.
16 Plaintiff claims that this interaction constituted harassment, official misconduct,
17 and a violation of his First and Fourteenth Amendment rights, among other things.
18 *Id.* at 33-34.

1 6. *Incidents in 2012*

2 In June 2012, Plaintiff was vacating his rental unit. *Id.* at 35. All the
3 parking spaces around the unit were illegally occupied by patrons of an annual car
4 show. *Id.* A GCSO chief deputy arrived when Plaintiff had a verbal altercation
5 with some of the patrons, to ensure that Plaintiff did not attempt to move the
6 vehicles himself. *Id.* at 36. Plaintiff states a GCSO sheriff, who was off duty,
7 shouted “I hate him!”, referencing Plaintiff. *Id.* Plaintiff alleges that this incident
8 constituted failure of duty by public officer, official misconduct, conspiracy, and a
9 violation of his Fourth, Fifth, and Fourteenth Amendment rights. *Id.* at 36-38.

10 In March or April 2012, Plaintiff filed a motion for custody of his son in
11 Garfield County Superior Court and was granted temporary sole custody. *Id.* at 38.
12 Plaintiff alleges that his Ms. Heathcott harassed him about the motion for custody
13 via calls and e-mails, but the GCSO failed to pursue the allegations. *Id.* at 39.
14 Plaintiff alleges that Ms. Heathcott prompted two of Plaintiff’s children to leave
15 Plaintiff’s residence and “make false and/or misleading accusations of abuse” to
16 the GCSO on two occasions. *Id.* Plaintiff alleges the GCSO conspired with Ms.
17 Heathcott to seize Plaintiff’s children, and they kept the children’s location secret
18 from Plaintiff pending an abuse investigation. *Id.*

19 In July 2012, the GCSO notified Spokane County CPS of the alleged abuse
20 and CPS agent Heidi Pinkert arrived to investigate. *Id.* at 40. Plaintiff showed

1 Defendant Pinkert this disability ruling and a copy of the custody order, and was
2 told “none of these matter.” *Id.* at 41. Plaintiff and his children were interviewed
3 by Ms. Pinkert and Plaintiff signed a protective action form “under the threat of
4 forceful removal of his children.” *Id.* Plaintiff reported the “illegal actions” of the
5 individuals related to this incident to multiple people, but no actions have been
6 taken. *Id.* at 42-43.

7 Plaintiff also believes that his home remains under surveillance by the
8 GCSO and Washington State Patrol. *Id.* Plaintiff claims that this series of
9 incidents amount to harassment, conspiracy, coercion, destruction of parent-child
10 relationship, official misconduct, intentional infliction of emotional distress, and
11 intimidation, and constitutes a violation of his Fourth and Fourteenth Amendment
12 rights, among other things. *Id.* at 43-45.

13 7. Incident in 2022

14 On December 28, 2022, Plaintiff called county clerk Marie Gormsen, to ask
15 whether a tort form was necessary to sue the county. *Id.* at 46. Ms. Gormsen
16 informed Plaintiff she could not give legal advice. *Id.* Plaintiff responded to Ms.
17 Gormsen with “strong, clear, and determined language,” and she asked Plaintiff to
18 stop yelling; Plaintiff stated he had PTSD and spoke in that manner all the time.
19 *Id.* at 47. Ms. Gormsen reportedly stated, “Wow, I am sure am glad I don’t have to
20 talk to you everyday.” *Id.* (as written). Plaintiff alleges this incident violated his

1 First Amendment rights and amounted to official misconduct, harassment, and
2 disability discrimination. *Id.* at 47-48.

3 8. *Incident in 2023*

4 On January 6, 2023, Plaintiff contacted Sheriff Hyer regarding a reported
5 theft on his property. *Id.* at 48. Plaintiff told Sheriff Hyer to trespass his neighbor
6 if she did not remove her belongings from a disputed property. *Id.* Sheriff Hyer
7 stated the “contract for deed that was registered at the courthouse” did not mean
8 Plaintiff could possess the property, which Plaintiff contends “was a thinly veiled
9 threat.” *Id.* Plaintiff contends this incident amounted to unlawful conduct. *Id.* at
10 49.

11 **LEGAL STANDARD**

12 When a defendant moves for dismissal for lack of personal jurisdiction
13 pursuant to Fed. R. Civ. P. 12(b)(2), it is the plaintiff who “bears the burden of
14 demonstrating that jurisdiction is appropriate.” *Schwarzenegger v. Fred Martin*
15 *Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004) (citation omitted). When the
16 defendant’s motion to dismiss relies only on written materials, “the plaintiff need
17 only make a prima facie showing of jurisdictional facts.” *Id.* (quotation and
18 citation omitted). The court must determine whether a plaintiff’s “pleadings and
19 affidavits establish” the requisite showing. *Data Disc, Inc. v. Sys. Tech. Assocs.*,
20 557 F.2d 1280, 1286 (9th Cir. 1977). “The plaintiff cannot ‘simply rest on the bare

1 allegations of its complaint,’ but uncontroverted allegations in the complaint must
2 be taken as true.” *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1223
3 (9th Cir. 2011) (quoting *Schwarzenegger*, 374 F.3d at 800). If any conflict exists
4 between the parties’ evidence, the court must resolve it in the plaintiff’s favor.
5 *AT&T v. Compagnie Bruxelles Lambert*, 94 F.3d 586, 588 (9th Cir. 1996).
6 Although *pro se* pleadings are held to less stringent standards than those prepared
7 by attorneys, *pro se* litigants in an ordinary civil case should not be treated more
8 favorably than parties with attorneys of record. *See Jacobsen v. Filler*, 790 F.2d
9 1362, 1364 (9th Cir. 1986).

10 To survive a Rule 12(b)(6) motion to dismiss, a complaint must contain
11 sufficient factual matter, accepted as true, to “state a claim to relief that is plausible
12 on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “Threadbare recitals of
13 the elements of a cause of action, supported by mere conclusory statements, do not
14 suffice.” *Id.* In considering a motion to dismiss for failure to state a claim, the
15 Court must accept as true the well-pleaded factual allegations and any reasonable
16 inference to be drawn from them, but legal conclusions are not entitled to the same
17 assumption of truth. *Id.* A complaint must contain either direct or inferential
18 allegations respecting all the material elements necessary to sustain recovery under
19 some viable legal theory. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 562
20 (2007). “Factual allegations must be enough to raise a right to relief above the

1 speculative level.” *Id.* at 555. Although *pro se* pleadings are held to less stringent
2 standards than those prepared by attorneys, *pro se* litigants in an ordinary civil case
3 should not be treated more favorably than parties with attorneys of
4 record. *See Jacobsen v. Filler*, 790 F.2d 1362, 1364 (9th Cir. 1986).

5 A complaint may only be dismissed on statute of limitations grounds,
6 pursuant to Rule 12(b)(6), if it appears beyond doubt that the plaintiff can prove no
7 set of facts that would establish the timeliness of the claim. *Jablon v. Dean Witter*
8 *& Co.*, 614 F.2d 677, 682 (9th Cir. 1980); *TwoRivers v. Lewis*, 174 F.3d 987, 991
9 (9th Cir. 1999) (internal citations omitted). The running of the statute of
10 limitations must be apparent on the face of the complaint. *Huynh v. Chase*
11 *Manhattan Bank*, 465 F.3d 992, 997 (9th Cir. 2006).

12 DISCUSSION

13 A. Defendant Ballard’s Motion to Dismiss

14 On April 30, 2024, counsel filed a Motion to Dismiss on behalf of “Lake of
15 the Woods County, Minnesota” and Defendant Ballard. ECF No. 22 at 1. Lake of
16 the Woods County is not a party to this action. Defendant’s Complaint lists Amy
17 Ballard as a Defendant, ECF No. 1 at 3-4, and lists Defendant Ballard as “Lake of
18 the Woods County Minnesota CPS Agency Director Amy Ballard in her personal
19 capacity,” *id.* at 1. Plaintiff’s response notes that Lake of the Woods County is not
20

1 a party. ECF No. 26 at 2. As the Lake of the Woods County is not a party, the
2 Court addresses the motion as Defendant Ballard's Motion.

3 Defendant Ballard contends this Court does not have jurisdiction over
4 Defendant. ECF No. 22 at 3-7. If the Court found personal jurisdiction, Defendant
5 Ballard alternatively contends the claims are barred by the statute of limitations.
6 *Id.* at 7-9.

7 *1. Personal Jurisdiction*

8 Defendant Ballard contends this Court does not have jurisdiction over
9 Defendant. *Id.* at 3-7. "Federal courts ordinarily follow state law in determining
10 the bounds of their jurisdiction over persons." *Daimler AG v. Bauman*, 571 U.S.
11 117, 125 (2014) (citing Fed. R. Civ. P. 4(k)(1)(A)). "Where, [as in this matter],
12 there is no applicable federal statute governing personal jurisdiction, the law of the
13 state in which the district court sits applies." *Harris Rutsky & Co. Ins. Servs. v.*
14 *Bell & Clements Ltd.*, 328 F.3d 1122, 1129 (9th Cir. 2003); *see* Fed. R. Civ. P.
15 4(k)(1). Washington's long-arm statute authorizes courts to exercise jurisdiction
16 over nonresident defendants to the "full extent" of the Due Process Clause. *Easter*
17 *v. Am. W. Fin.*, 381 F.3d 948, 960 (9th Cir. 2004) (citing *Shute v. Carnival Cruise*
18 *Lines, Inc.*, 783 P.2d 78, 79-80 (Wash. 1989)); *see also Corker v. Costco*
19 *Wholesale Corp.*, 585 F. Supp. 3d 1284, 1290 (W.D. Wash. 2022). Accordingly,
20 the Court need only determine whether exercising personal jurisdiction in this case

1 comports with due process. *See Yamashita v. LG Chem, Ltd.*, 62 F.4th 496, 502
2 (9th Cir. 2023). Due process requires that the defendant have “certain minimum
3 contacts” with a forum state “such that the maintenance of the suit does not offend
4 ‘traditional notions of fair play and substantial justice.’” *Int’l Shoe Co. v.*
5 *Washington*, 326 U.S. 310, 316 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457,
6 463 (1940)).

7 The Supreme Court has recognized two kinds of personal jurisdiction:
8 general and specific. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S.
9 915, 919 (2011) (citing *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466
10 U.S. 408, 414, nn. 8 & 9 (1984)). “A court has general jurisdiction over a
11 defendant only when the defendant’s contacts with the forum state are so
12 ‘continuous and systematic as to render [them] essentially at home in the forum
13 State.’” *LNS Enterprises LLC v. Cont’l Motors, Inc.*, 22 F.4th 852, 859 (9th Cir.
14 2022). Specific jurisdiction, “covers defendants that are less intimately connected
15 with a state, but that have sufficient minimum contacts with the state that are
16 relevant to the lawsuit.” *Id.* at 859.

17 First, Defendant Ballard contends she does not have the requisite contacts
18 with Washington required to establish general jurisdiction. ECF No. 22 at 6.
19 Defendant Ballard works in Minnesota and has never traveled to Washington in a
20 professional capacity. *Id.*; ECF No. 23 at 2. Plaintiff concedes Defendant Ballard

1 has not had a physical presence in Washington and does not appear to present any
2 evidence to support a finding of general jurisdiction. *See* ECF No. 26 at 4.
3 Plaintiff discusses cases that addressed general jurisdiction but offers no
4 explanation as to how Defendant Ballard has had continuous systematic contact
5 with the state of Washington. *Id.* Plaintiff has not established general jurisdiction.

6 Second, Defendant Ballard contends the acts complained of do not arise out
7 of or relate to any acts within Washington, and it thus would be unreasonable to
8 find specific jurisdiction exists over a Minnesota employee for actions that
9 occurred entirely outside of Washington. ECF No. 22 at 6-7. The Ninth Circuit
10 has set forth a three-prong test to determine if a nonresident defendant has
11 sufficient minimum contacts to establish personal jurisdiction over the defendant:

12 (1) The non-resident defendant must purposefully direct his activities
13 or consummate some transaction with the forum or resident
14 thereof; or perform some act by which he purposefully avails
himself of the privilege of conducting activities in the forum,
thereby invoking the benefits and protections of its laws;

15 (2) the claim must be one which arises out of or relates to the
16 defendant's forum-related activities; and

17 (3) the exercise of jurisdiction must comport with fair play and
substantial justice, i.e. it must be reasonable.

18 *Schwarzenegger*, 374 F.3d at 802 (quoting *Lake v. Lake*, 817 F.2d 1416, 1421 (9th
19 Cir. 1987)).

1 Defendant contends all the activities at issue occurred in Minnesota, while
2 Plaintiff was in Minnesota and none of the activities involved the state of
3 Washington. ECF No. 22 at 7; ECF No. 23 at 2-3. Plaintiff appears to concede the
4 events took place in Minnesota but contends the Uniform Child Custody
5 Jurisdiction and Enforcement Act (UCCJEA) stipulates there is continuing
6 jurisdiction for child custody litigation in the courts of the child's home state. ECF
7 No. 26 at 3. Plaintiff contends the UCCJEA thus provides this Court personal
8 jurisdiction over Defendant Ballard. *Id.* The UCCJEA is a uniform law that
9 applies to child custody issues, and it has been adopted by several states; it is not a
10 federal law and it does not confer jurisdiction in a federal case. *See Cathey v.*
11 *Harrison*, No. 116CV00545LJOMJS, 2016 WL 4494446, at *2 (E.D. Cal. Aug. 25,
12 2016). Plaintiff also contends the actions in Minnesota have caused ongoing
13 injuries to Plaintiff now that he resides in Washington and the continuing sequence
14 of events provides personal jurisdiction. *Id.* at 4. Plaintiff's bare assertions that
15 events that took place in Minnesota later caused him harm while he was living in
16 Washington does not establish personal jurisdiction. *See Mavrix Photo, Inc.*, 647
17 F.3d at 1223. Plaintiff has not established specific jurisdiction.

18 As Plaintiff has not demonstrated the Court has personal jurisdiction over
19 Defendant Ballard, the Motion to Dismiss is granted.

1 2. *Statute of Limitations*

2 As the Court does not have personal jurisdiction over Defendant Ballard, the
3 Court grants Defendant's Motion to Dismiss. Thus, the Court need not reach the
4 statute of limitations issue.

5 **B. DSHS' Motion to Dismiss**

6 Defendant DSHS contends Plaintiff's claims fail to state a claim because
7 they are barred by the statute of limitations, Plaintiff lacks standing to bring the
8 criminal claims and destruction of parent-child relationship claim, and he fails to
9 state a claim under the Americans with Disabilities Act (ADA). ECF No. 24.

10 DSHS also contends Plaintiff failed to properly serve Defendant. *Id.* at 5-7.

11 1. *Statute of Limitations*

12 DSHS contends Plaintiff's claims are barred by the statute of limitations. *Id.*
13 at 4. The only allegations in Plaintiff's Complaint that concern DSHS are related
14 to events that took place in 2012. ECF No. 1 at 40-43. Plaintiff filed the
15 Complaint on February 1, 2024.

16 i. State law claims

17 As discussed in the Court's prior Order, the state law claims are barred by
18 the statute of limitations. ECF No. 28 at 12. Plaintiff's allegations that Ms.
19 Pinkert's actions in 2012 amounted to intentional infliction of emotional distress
20 are barred by the statute of limitations. *See Kloepfel v. Bokor*, 149 Wash.2d 192,

1 193 n. 1 (2003). (“‘Outrage’ and ‘intentional infliction of emotional distress’ are
2 synonyms for the same tort.”); *Cox v. Oasis Physical Therapy, PLLC*, 153 Wash.
3 App. 176, 192, 222 P.3d 119, 127 (2009) (applying three-year statute of limitations
4 from RCW 4.16.080(2) to intentional infliction of emotional distress claim). It is
5 unclear if Plaintiff alleges Ms. Pinkert committed other torts against Plaintiff, but
6 any other allegations arising out of the 2012 events would also be barred by the
7 statute of limitations. *See* RCW 4.16.100.

8 ii. Section 1983 claims

9 Plaintiff’s section 1983 claims are also barred by the statute of limitations.
10 *See* ECF No. 28 at 12-16. Section 1983 actions brought after the statute of
11 limitations may be dismissed under Federal Rule of Procedure 12(b)(6). *See Watts*
12 *v. Graves*, 720 F.2d 1416, 1422-23 (5th Cir. 1983). Under the 12(b)(6) standard, a
13 court cannot look beyond the pleadings, therefore the running of the statute of
14 limitations must be apparent on the face of the complaint. *Von Saher v. Norton*
15 *Simon Museum of Art at Pasadena*, 592 F.3d 954, 969 (9th Cir. 2010) (citing
16 *Huynh v. Chase Manhattan Bank*, 465 F.3d 992, 997 (9th Cir. 2006)).

17 Under Section 1983, civil liability flows from a person acting under color of
18 state law to deprive a plaintiff “of any rights, privileges, or immunities” protected
19 by the U.S. Constitution and federal laws. 42 U.S.C. § 1983; *see also West v.*
20 *Atkins*, 487 U.S. 42, 48 (1988). State law governs the timeliness of a Section 1983

1 claim. *Nance v. Ward*, 142 S. Ct. 2214, 2225 (2022). As such, a Section 1983
2 claim must commence within the statute of limitations for personal injury actions
3 in the state where the cause of action arose. *Wallace v. Kato*, 549 U.S. 384, 387
4 (2007). In Washington, a personal injury action expires at three years. RCW §
5 4.16.080(2); *see also Bagley v. CMC Real Est. Corp.*, 923 F.2d 758, 760 (9th Cir.
6 1991).

7 Whereas state law sets the outer limits of the statute of limitations, federal
8 law determines when a statute of limitations begins to run. *Lukovsky v. City &*
9 *Cnty. of S.F.*, 535 F.3d 1044, 1048 (9th Cir. 2008). This date is synonymous with
10 the “accrual” of a Section 1983 claim, meaning the date “the plaintiff knows or has
11 reason to know of the injury that is the basis of the action.” *Pouncil v. Tilton*,
12 704 F.3d 568, 573-74 (9th Cir. 2012). Even if the plaintiff does not know the full
13 extent of the injury, the cause of action accrues. *Wallace*, 549 U.S. at 391.

14 Plaintiff alleges that Ms. Pinkert’s actions in 2012 violated his Fourteenth
15 Amendment and Fourth Amendment rights. ECF No. 1 at 40-44. As discussed,
16 *supra*, the applicable statute of limitations for Plaintiff’s Section 1983 claims is
17 three years. *See* RCW 4.16.130. Plaintiff filed his Complaint on February 1, 2024,
18 which would bar any claims arising from events that occurred before February 1,
19 2021. There is no evidence or allegation suggesting that Plaintiff did not know, or
20 have reason to know, that his rights may have been violated following each

1 instance discussed herein. *See Pouncil*, 704 F.3d at 573-74; *Wallace*, 549 U.S. at
2 391. There is no evidence to suggest that Plaintiff could not have pursued a
3 Section 1983 action within the three-year statute of limitations. For these reasons,
4 the Court determines that any possible Section 1983 claim(s) accrued immediately
5 after the events occurred, and the statute of limitations began to run at that time.

6 Plaintiff contends his claims are for the loss of his Second Amendment
7 rights and “loss of personal agency which was determined in 2020 by the Veterans
8 Administration’s adjudication process.” ECF No. 30 at 6. Plaintiff alleges all
9 claims for relief against Defendants are connected to Plaintiff’s injury. *Id.* It is
10 unclear how a 2020 Veterans Affairs determination, nor Plaintiff’s Second
11 Amendment rights, are connected to Ms. Pinkert’s 2012 actions. Plaintiff has not
12 set forth any explanation as to why the statute of limitations does not bar his
13 claims. Thus, the Court finds that Plaintiff’s claims are barred by the statute of
14 limitations.

15 2. *Standing to Bring State Criminal Claims*

16 Defendant contends Plaintiff lacks standing to bring the state criminal
17 claims. ECF No. 24 at 7. As discussed in the Court’s prior Order, Plaintiff asserts
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19
20

1 numerous criminal causes of action,³ which are brought under Title 9A of the
2 Washington Revised Code, Washington's criminal code. Plaintiff, as a private
3 citizen, lacks standing to bring these claims. Only the Attorney General of
4 Washington or a County prosecutor may bring such actions in state Court. *See*
5 RCW 43.10.232. No caselaw establishes a court's jurisdiction over a criminal
6 matter initiated by a private citizen because a Washington Superior Court only
7 acquires subject matter jurisdiction over a criminal action when an indictment or
8 information is filed by the correct official in accordance with the state criminal
9 court rules. *See State v. Barnes*, 43 P.3d 490, 494 (Wash. 2002) (en banc).

10 Here, Plaintiff is a private citizen who lacks standing to bring any claims
11 under Title 9A of the Revised Code of Washington. Further, county prosecutors
12 and the Attorney General of Washington may only bring such charges in state
13

14 ³ Plaintiff asserts causes of action for Assault under RCW 9A.36.011; Reckless
15 Endangerment under RCW 9A.36.050; Harassment under RCW 9A.46.020;
16 Stalking under RCW 9A.46.110; Coercion under RCW 9A.36.070; Theft from a
17 Vulnerable Adult under RCW 9A.56.400; False Reporting under RCW 9A.84.040;
18 Official Misconduct under RCW 9A.80.010; Conspiracy under RCW 9A.28.040;
19 and Intimidation under RCW 9A.76.180. *See* ECF No. 1 at 21-22, 24, 27-29, 31-
20 33, 36, 43-44, 47.

1 Superior Court. *See Barnes*, 43 P.3d at 494 (a [Washington state] *superior court*
2 only acquires subject matter jurisdiction over a criminal action when it is filed by
3 the correct official in accordance with the superior court rules) (emphasis added).
4 In sum, Plaintiff lacks standing to bring such claims, and this Court would lack
5 subject matter jurisdiction over the claims. Plaintiff concedes he lacks standing to
6 bring the claims and states he “does not wish to bring criminal claims before this
7 court.” ECF No. 30 at 3. As such, the criminal claims are dismissed.

8 *3. Standing to Bring Destruction of Parent-Child Relationship Claim*

9 DSHS contends Plaintiff lacks standing to bring a destruction of parent-child
10 relationship claim. ECF No. 24 at 7-8. RCW 4.24.010 states a parent or legal
11 guardian who has regularly contributed to the support of their minor child may
12 maintain or join as a party an action as plaintiff for the “injury or death of the
13 child.”

14 Plaintiff alleges there has been destruction of a parent-child relationship,
15 pursuant to RCW 4.24.010. ECF No. 1 at 43. The allegation appears to be based
16 on Plaintiff’s children being “overtly disrespectful” to Plaintiff and his wife, the
17 allegations of abuse against Plaintiff, the children later being “seized,” and their
18 location not being shared with Plaintiff. *Id.* at 38-46. Plaintiff does not allege any
19 of his children were injured or died. As such, Plaintiff lacks standing to bring a
20 claim pursuant to RCW 4.24.010.

1 Plaintiff states he “agrees that RCW 4.24.010 was the incorrect code for
2 destruction of the parent-child relationship,” but he continues to assert Defendants’
3 actions/inactions destroyed his relationship with his children and contributed to his
4 injury. ECF No. 30 at 3. Plaintiff cites to codes concerning the definition of
5 parents and parent-child relationships in Washington but does not set forth any
6 facts to support a destruction of parent-child relationship claim. As such, the claim
7 is dismissed.

8 *4. Failure to State a Claim under 42 U.S.C. § 1983*

9 Section 1983 requires a claimant to prove that (1) a person acting under
10 color of state law (2) committed an act that deprived the claimant of some right,
11 privilege, or immunity protected by the Constitution or laws of the United States.
12 *Leer v. Murphy*, 844 F.2d 628, 632-33 (9th Cir. 1988). “A person deprives
13 another of a constitutional right, within the meaning of section 1983, if he does an
14 affirmative act, participates in another’s affirmative acts, or omits to perform an
15 act which he is legally required to do that *causes* the deprivation of which [the
16 plaintiff complains].” *Redman v. Cty. of San Diego*, 942 F.2d 1435, 1439 (9th
17 Cir. 1991) (emphasis and brackets in the original) (internal quotation omitted),
18 *abrogated in part on other grounds by Farmer v. Brennan*, 511 U.S. 825 (1994).
19 A government entity is only a “person” subject to liability under section 1983
20

1 where an official policy, practice, or custom causes a constitutional tort. *Monell v.*
2 *Dep't of Social Servs.*, 436 U.S. 658, 691 (1978).

3 A complaint must set forth the specific facts upon which the plaintiff relies
4 in claiming the liability of each defendant. *Ivey v. Bd. of Regents of Univ. of*
5 *Alaska*, 673 F.2d 266, 268 (9th Cir. 1982). Although the standard to evaluate a
6 motion to dismiss is liberal, particularly when the action has been filed *pro se*, a
7 liberal interpretation of a civil rights complaint may not supply essential elements
8 of a claim that the plaintiff initially failed to plead. *Id.* Thus, to withstand
9 dismissal on a Section 1983 claim, Plaintiff must set forth facts demonstrating
10 how each Defendant caused or personally participated in causing a deprivation of
11 Plaintiff's protected rights. *Arnold v. Int'l Bus. Machines Corp.*, 637 F.2d 1350,
12 1355 (9th Cir. 1981); *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989).

13 The only DSHS-related action that Plaintiff contends violated his rights
14 took place in 2012. ECF No. 1 at 40-43. As the claim is barred by the statute of
15 limitations, as discussed *supra*, Plaintiff has failed to state a section 1983 claim.

16 *5. Failure to State a claim under the Americans with Disabilities Act*

17 Defendant contends Plaintiff has not stated a plausible claim for relief
18 under the ADA. ECF No. 24 at 9. To state a claim of disability discrimination
19 under Title II, a plaintiff must allege four elements: (1) he "is an individual with a
20 disability;" (2) he "is otherwise qualified to participate in or receive the benefit of

1 some public entity’s services, programs, or activities;” (3) he “was either
2 excluded from participation in or denied the benefits of the public entity’s
3 services, programs, or activities, or was otherwise discriminated against by the
4 public entity;” and (4) “such exclusion, denial of benefits, or discrimination was
5 by reason of [his] disability.” *Thompson v. Davis*, 295 F.3d 890, 895 (9th Cir.
6 2002) (per curiam), *cert. denied*, 538 U.S. 921 (2003).

7 Plaintiff alleges he is an individual with a disability but does not allege that
8 he was excluded or denied benefits or otherwise discriminated against because of
9 his disability. Plaintiff states Ms. Pinkert was aware of Plaintiff’s documented
10 disability and used his emotional responses to remove his children from him. ECF
11 No. 1 at 40-44; ECF No. 30 at 5. However, Plaintiff states Ms. Pinkert told him
12 that Plaintiff’s “visible outrage” supported her decision to remove the children.
13 ECF No. 1 at 41. There is no evidence that Ms. Pinkert removed Plaintiff’s
14 children or engaged in other discriminatory actions *because of* his disability. *See*
15 *Weinrich v. Los Angeles County Metropolitan Transp. Auth.*, 114 F.3d 976, 978
16 (9th Cir. 1997) (the exclusion, denial of benefits, or discrimination must be “by
17 reason of” the plaintiff’s disability to establish liability under Title II of the ADA).
18 Plaintiff has not stated a plausible claim for relief under the ADA.

1 6. *Failure to Perfect Service*

2 As the case is dismissed for the reasons discussed *supra*, the Court declines
3 to address Plaintiff's failure to perfect service.

4 **C. Motion for Electronic Access**

5 On May 29, 2024, Plaintiff requested electronic filing authorization. ECF
6 No. 27. As the Court dismisses the case for the reasons discussed herein, the Court
7 finds Plaintiff's request for electronic access is moot. Plaintiff's request is
8 therefore denied.

9 **D. Motion for Leave to Amend Complaint**

10 The Court does not find good cause to grant plaintiff an opportunity to
11 amend his complaint. On April 18, 2024, Plaintiff filed a Motion for Leave to
12 Amend Complaint, ECF No. 18, which the Court denied, ECF No. 28. Plaintiff
13 now files a second Motion for Leave to Amend Complaint, ECF No. 29.

14 Fed R. Civ. P. 15(a)(1) allows a plaintiff to amend their complaint within 21
15 days of filing the original complaint. Rule 15(a)(1)(B) authorizes a party to amend
16 his or her complaint once "as of right," or without Court permission, no later than
17 21 days after a pleading requiring a response (here a 12(b)(6) motion) is filed.
18 After the 21-day period, parties may only amend its pleadings with the opposing
19 party's written consent or the court's leave. Fed. R. Civ. P. 15(a)(2).

1 Plaintiff filed his second Motion Seeking Leave to Amend, ECF No. 29, on
2 June 3, 2024. As Defendants' motions to dismiss were filed on April 30, 2024, and
3 May 6, 2024, Plaintiff's motion fell outside of the 21-day period allowed under
4 Fed. R. Civ. P. 15(a)(1)(B). Defendants have not consented to the amendment,
5 thus Plaintiff may only amend with the Court's leave.

6 The Court has reviewed Plaintiff's proposed amended complaint and finds
7 granting leave to amend would be futile. Plaintiff seeks to add Lake of the Woods
8 County and Garfield County as defendants. ECF No. 29-2. The proposed
9 amended complaint again alleges violations of Plaintiff's First, Fourth, Fifth, and
10 Fourteenth Amendment rights, and violations of the ADA, and adds a Section 1986
11 claim. *Id.* at 4. The complaint again focuses on actions that took place in 2004
12 through 2012. *Id.* at 7-32. Plaintiff contends his ex-wife has been allowed to make
13 false reports against him, and public officials and the GSCO have engaged in abuse
14 of power through 2023. *Id.* Plaintiff offers no further details of specific actions
15 that took place within the statute of limitations. The proposed complaint contains
16 legal conclusions unsupported by any facts to support the legal claims and contains
17 numerous claims Plaintiff has no standing to bring for the reasons discussed *supra*.

18 Plaintiff's proposed complaint fails to state a Section 1986 claim. Section
19 1986 imposes liability on persons who know of an impending Section 1985
20 violation but neglect or refuse to prevent the violation; therefore, a Section 1986

1 claim can only be stated if the complaint contains a valid claim under Section
2 1985. *Karim-Panahi v. Los Angeles Police Dep't*, 839 F.2d 621, 626 (9th Cir.
3 1988) (citing *Trerice v. Pedersen*, 769 F.2d 1398, 1403 (9th Cir. 1985). Plaintiff
4 contends Defendants violated Section 1986 by failing to prevent Section 1983
5 violations. ECF No. 29-2 at 34-35. Plaintiff does not set forth facts to support a
6 claim that Defendants conspired to interfere with Plaintiff's civil rights in violation
7 of Section 1985. *See Karim-Panahi*, 839 F.2d at 626.

8 The Court finds that allowing amendment would be futile because Plaintiff
9 could not overcome the statute of limitations and lack of standing by alleging more
10 facts. Amending to include a Section 1986 claim would also be futile because the
11 proposed complaint fails to state a Section 1986 claims. For these reasons,
12 Plaintiff's motion to amend his complaint is denied.

13 Accordingly, **IT IS HEREBY ORDERED:**

14 1. Defendant Ballard's Motion to Dismiss, **ECF No. 22**, is **GRANTED**.

15 2. Defendant DSHS' Motion to Dismiss, **ECF No. 24**, is **GRANTED**.

16 3. Plaintiff's Motion for Electronic Access, **ECF No. 27**, is **DENIED**.

17 4. Plaintiff's Motion for Leave to Amend Complaint, **ECF No. 29**, is
18 **DENIED**.

19 5. Plaintiff's Complaint, **ECF No. 1**, is **DISMISSED WITH PREJUDICE**.

1 The District Court Executive is directed to file this Order, enter judgment
2 accordingly, provide copies to counsel and *pro se* Plaintiff, and **CLOSE THE**
3 **FILE.**

4 DATED June 10, 2024.

5 *s/Mary K. Dimke*
6 MARY K. DIMKE
7 UNITED STATES DISTRICT JUDGE
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